



United States Department of the Interior

NATIONAL PARK SERVICE

1849 C Street, N.W.
Washington, D.C. 20240

IN REPLY REFER TO:

AUG 28 2007

Re: The Crown, 4041 Collins Avenue, Miami Beach, Florida
Project Number: 17271
Taxpayer's Identification Number:

Dear

My review of your appeal of the decision of Technical Preservation Services, National Park Service, denying certification of the rehabilitation of the property cited above is concluded. The appeal was initiated and conducted in accordance with Department of the Interior regulations (36 CFR Part 67) governing certifications for Federal income tax incentives for historic preservation as specified in the Internal Revenue Code. Thank you and your associates,

for meeting with me in
Washington on May 9, 2007, and for providing a detailed account of the project.

After careful review of the complete record for this project, including the Historic Preservation Certification Application filed with the National Park Service, the additional material presented at our meeting, the additional photographs supplied by in early June at my request, and the summary contained in his letter dated August 3, 2007, I have determined that the rehabilitation of the Crown is not consistent with the historic character of the property, and that the project does not meet Standards 2, 3, 4, and 9 of the Secretary of the Interior's Standards for Rehabilitation. Therefore, the denial issued on January 31, 2007, by Technical Preservation Services is hereby affirmed.

The Crown Hotel in Miami Beach was built in 1940 and enlarged in 1956. (The Historic Preservation Certification Application—Part 1 cites 1955 as the date for this enlargement; 1956 appears in the material supplied at our meeting. In this letter I have retained whatever date is cited in the passage quoted; I will deal with the significance of the different dates offered below.) Based on the information contained in the application, TPS issued a preliminary determination on March 21, 2006, that the property appeared to meet the National Register Criteria for Evaluation and would likely be listed in the National Register of Historic Places if nominated by the State Historic Preservation Officer. That preliminary determination of individual listing (PDIL) extended to "The main hotel building, which includes the original 1940 tower and the 1955 addition." The determination continued: "Because both parts of the building appear to be significant under National Register Criteria A and C, the period of significance would encompass the two construction dates." Criteria A and C of the National Register Criteria for Evaluation, codified at 36 CFR Part 60, apply to properties: (a) that are associated with events that have made a significant contribution to the broad patterns of our history... or (c) that embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction." [36

CFR Part 60.4]. TPS thus found that The Crown appeared to meet these criteria for its significance in history (Criterion A) and for architecture (Criterion C).

TPS based this determination on the Part 1 application, which cited the Crown as "one of Miami Beach's first 'skyscraper' hotels." The application continues: "The Crown is a significant art deco/streamline modern building.... The Crown is also significant as the work of prominent architects of the time, Victor H. Nellenbogen, who designed the original 1940 tower, and Melvin Grossman, who designed the 1955 addition." [Application Part 1, Item 6: Statement of Significance].

In evaluating the rehabilitation of this property against this putative historic significance, TPS found that several treatments caused the project not to meet the Secretary of the Interior's Standards for Rehabilitation. As regulations governing the historic preservation tax incentives program state, the "Standards for Rehabilitation are the criteria used to determine if a rehabilitation project qualifies as a certified rehabilitation." [36 CFR Part 67.7]. These include the demolition of the "1955 porte cochere that extended across the 1940 tower" and the "refashion[ing] of the tower base facade to resemble its 1940s appearance," the extensive reworking of the "south, street-facing facade of the 1955 addition," the construction of a large addition on the east, ocean-facing elevation of the 1956 section of the building, and the demolition of the guestroom corridors in both existing portions of the Crown. TPS also cited other work items as "problematic," but deemed the application insufficiently detailed to evaluate them. These elements include the "replacement of all windows in the 1955 addition, installation of balconies and enlargement of the corresponding window openings" on the east elevation of the entire building, "demolition of the cabanas and the swimming pool on the east side of the property, relocation of a historically unrelated 1931 house to the east side of the property, and partial subdivision of the lobby and complete subdivision of the second-floor banquet room in the 1955 addition."

After my extensive review of the entire matter, I am compelled to agree with the previous National Park Service decision regarding both the historic character of the Crown and the overall effect that the rehabilitation has had on that character—although, as discussed below, I do not agree with the latter determination in precisely every aspect. Nevertheless, I find that as a result of the physical work undertaken on the building its historic character has been impaired. Consequently, the rehabilitation cannot qualify as a "certified rehabilitation."

With regard to the historic character of the Crown—the matter TPS considered in issuing a PDIL—I agree that the "period of significance" of the structure includes the construction of the large addition to the south in 1956. At our meeting, much of the discussion centered on the correct date for this wing of the building. In the presentation and in the letters and other material submitted for my consideration, it was argued that this portion of the building was built in 1956, and was therefore not yet 50 years old when you modified it in 2005, and therefore that the changes listed above could not have affected its historic character. This argument is based on the statement in Department of the Interior regulations governing listing of properties in the National Register of Historic Places that "*Ordinarily... properties that have achieved significance within the past 50 years shall not be considered eligible for the National Register.*" [36 CFR Part 60.4] The regulations recognize an exception to this general rule in the case of "*A property achieving significance within the past 50 years if it is of exceptional importance.*" [36 CFR Part 60.4.(g)]. This exception is known as Criteria Consideration G.

Criteria Consideration G applies to properties that have achieved significance within the past 50 years, which must be of exceptional importance to qualify for listing in the National Register. Although often referred to as the "50-year rule," this provision is guidance, not a hard and fast rule. It is intended to

ensure that evaluations of historic significance are made on the basis of informed, dispassionate judgment, preferably grounded in scholarly sources, rather than popular sentiment, contemporary tastes, and prevailing fads. It is intended to ensure, in other words, that properties listed in the National Register have withstood the "test of time"—that is, that they possess historical associations of enduring value, as demonstrated by academic scholarship, professional recognition, and other measures of informed, dispassionate judgment.

Guidance concerning Criteria Consideration G is found mainly in *National Register Bulletin 22: Guidelines for Evaluating and Nominating Properties that Have Achieved Significance With the Past Fifty Years* [See 36 CFR Part 60.4]. This bulletin clearly states that historic significance does not change in a matter of a single year (or, as in this case, even in a matter of months). The bulletin further explains that "the 50 year period is an arbitrary span of time, designed as a filter to ensure that enough time has passed to evaluate the property in a historic context. However, it was not designed to be mechanically applied on a year by year basis." [NR Bulletin 22, page 6]. But even if the "50-year rule" were applied literally, at the time of the TPS decision granting the PDIL—March of 2006—the wing was 50 years old, whether it was built in 1955, as the application states, or 1956 (unless we are now speaking in terms of weeks or days rather than years).

I have considered the assessments of _____ architecture critic and author, concerning the building and the relative significance of the 1940s tower *vis à vis* the 1950s addition. Her statement attests to the role the Crown played in the development of Miami Beach, establishing as it did "a prototype for Miami Beach's new taller 'skyscraper' hotels." Yet I do not find her statement sufficiently convincing to say that the 1956 addition by Grossman did not contribute to the significance of the older building, or that it did not reflect the postwar building boom triggered by a fast-expanding tourist economy. _____ confirms to a degree the statement of the Part 1 that Grossman was an important architect in post-war Miami Beach. In my own professional opinion, the wing he added to the Crown does contribute to the significance of this property.

The August 3, 2007, letter from _____ states that you had already begun the project and had demolished part of the wing in April of 2005. This work thus took place before the application was submitted to the State Historic Preservation Officer for forwarding to the National Park Service. However, this does not render the TPS consideration of the property's significance moot. Department of the Interior regulations governing the program state: "*Where rehabilitation credits are sought, certifications of significance will be made on the appearance and condition of the property before rehabilitation was begun.*" [36 CFR Part 67.5]. As the owner of the property, you were free to apply after starting work, but "*Owners who undertake rehabilitation projects without prior approval from the Secretary do so strictly at their own risk.*" [36 CFR Part 67.6].

Thus, I conclude from examining the entire record that the changes made during the 1950s to the Crown indeed contributed to the property's significance, and were rightly taken into account by TPS when weighing the effect of the rehabilitation described in the application on the overall property. And with respect to the rehabilitation treatments cited by TPS, I agree that changes made to the Crown involving the more recent portion have brought the rehabilitation into conflict with the Secretary of the Interior's Standards for Rehabilitation.

Most visible among these changes were the removal of the porte cochere added during the 1950s, and the reworking of the ground floor facade to reestablish the hotel's 1940 appearance. This work has caused the

loss of a major feature of the building. On the ocean side, installation of balconies and enlargement of the corresponding window openings in the original building dramatically alters its historic character. The original design featured regular setbacks on both the Collins Avenue and beachfront facades, which the balconies now obscure. These changes cause the project to contravene Standard 2, which states: *"The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided."* At the same time, the new addition covers a significant portion of the 1956 facade, removing important evidence of the building's development over time, and brings the project into conflict with Standard 4, which notes that: *"Most properties change over time" and requires that "those changes that have acquired historic significance in their own right shall be retained and preserved."* Finally, this combination of treatments, by creating a new and ahistorical combination of features from the 1940s and 1950s, has created a false sense of the property's development, and thus brought the project into conflict with Standard 3, which states that *"Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken."*

The other changes to the 1956 portion of the building have also caused the project to contravene the Standards for Rehabilitation. The addition of balconies and the changes necessary to accommodate their introduction, such as the removal of fabric from the spandrels, has caused the extensive reworking of the entire elevation facing 40th Street. This elevation was in fact quite distinguished, and the refashioning has diminished the feature in its own right and its contribution to the overall property. As a result, this aspect of the project causes the project not to meet Standards 2 and 4, cited above. And the new balconies and window openings have also brought it into conflict with Standard 9 as well. Standard 9 states: *"New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment."*

Moreover, the new addition at the east side of the 1956 portion towers over this section of the building, thereby diminishing its contribution to the property. Indeed, as the TPS decision noted, the new construction "blocks virtually all the wing from view along the east [that is, the beach] side of the property." But I also find that this substantial new construction adds a highly visible element that both competes with the property as a whole—including the 1940 tower portion—and is incompatible with it. As a result, it, too, brings the project into conflict with Standards 2 and 9, cited above.

As for the other changes cited by TPS as "problematic" due to the lack of information in the application, they have played no role in this decision.

Beyond questions of the rehabilitation of the Crown itself, the material presented for my consideration raises several other matters pertaining to the TPS review of this rehabilitation. The material discusses the Cadillac Hotel, a neighboring property that underwent rehabilitation in 2003. The completed rehabilitation of this building was approved by TPS. Like the Crown, it was built in 1940 and enlarged in the 1950s (1957 in the case of the Cadillac Hotel). In the rehabilitation, changes were made that were similar to those made to the Crown, including the removal of the 1950s porte cochere, the addition of balconies to the 1950s wing, and the replacement of windows. TPS found that this completed rehabilitation met the Standards for Rehabilitation. As part of this appeal, it was argued that the TPS decision in the case of the Cadillac should compel approval of the Crown rehabilitation, since "The Crown Rehabilitation was guided

by the successful rehabilitation of the adjacent Cadillac Hotel” (letters from dated May 9 and August 3, 2007).

It is important to note, as Department of the Interior regulations governing the program state: *“Because the circumstances of each rehabilitation project are unique to the particular certified historic structure involved, certifications that may have been granted to other rehabilitations are not specifically applicable and may not be relied on by owners as applicable to other projects.”* [36 CFR Part 67.6(a)(1)].

Consequently, certification granted to this or any other project cannot compel the Secretary of the Interior to certify the rehabilitation of the Crown unless the rehabilitation meets the applicable statutory standard, which is that the rehabilitation must be consistent with the historic character of the property.

Nevertheless, although I am not required to consider other projects in my review of individual projects, I have examined this other case and note that it differs from the project under consideration here in two crucial respects. With regard to the Cadillac Hotel, TPS received a Part 1 application for the property on March 17, 2003. In response, it issued a preliminary determination that the building appeared to contribute to the significance of a proposed historic district on April 1, 2003. In contrast to the application for the Crown, the Part 1 cites the 1957 addition as a later and non-historic addition. It was against this background that the SHPO and TPS evaluated the rehabilitation work proposed in the Part 2 application. Because the 1957 modifications to the Cadillac were considered as non-historic (based in part on the descriptions provided in the Part 1—Evaluation of Significance), TPS deemed that the changes made to those portions of the property did not disqualify the project under the Standards for Rehabilitation. Accordingly, the rehabilitation proposal described in the Part 2 was approved, and the completed rehabilitation was found to be in keeping with those Standards. I note that the SHPO concurred in both of these evaluations.

I find no contradiction here. TPS issued a preliminary determination of significance for the Cadillac Hotel on April 1, 2003; at that time it considered that the 1957 wing had not acquired significance. On the other hand, it issued a PDIL for the Crown on March 21, 2006. At that time it determined that the changes made in 1956 had become significant additions to the property; I note that the SHPO also concurred in this determination. As I discussed earlier, although the “50-year rule” is not a hard and fast rule; nevertheless, in the one case the modifications were not 50 years old, while in the other, the 1950s changes were indeed 50 years old. And although history is a matter of continuous development that does not normally fall in increments of a single year or two, I see no contradiction in saying that *evaluations* of resources from nearly the same time in the relatively “recent past” may justifiably differ when the one evaluation is made three years after the other, especially when the determination that the 1950s resource had acquired significance is the later judgment of the two. At some point, it is or will be incontestable that resources from the 1950s are part of the architectural and historic heritage of the American people. General agreement on such matters does not happen all at once. But that TPS determined in 2003 that one resource from the 1950s did not yet meet that test does not mean that TPS could not consider that point to have been reached by 2006, even for resources of the same general type, period, and appearance.

The case of the Crown under review here also differs from that of the Cadillac Hotel in one other major respect: the former project involved the construction of a new tower. This new construction, as discussed above, is sufficient alone to bring the Crown rehabilitation into conflict with the Secretary of the Interior’s Standards for Rehabilitation, thereby rendering it ineligible for the 20 percent investment tax credit authorized by Federal law.

In regard to another procedural matter, the August 3, 2007, letter from _____ notes that the rehabilitation of the Cadillac “was approved at the State level by Janet Matthews, the current Associate Director for Cultural Resources of the National Park Service.” As the letter goes on to note, “The National Park Service subsequently approved the Cadillac project for Certification in 2004 and the addition was deemed non-historic.” Indeed, Dr. Matthews, then State Historic Preservation Officer for the State of Florida, recommended approval of the Cadillac rehabilitation project in a formal transmission of the application to TPS in 2003. TPS concurred with this decision, and issued the requested certification. As Department of the Interior regulations note: *“Requests for certifications and approvals of proposed rehabilitation work are sent by an owner first to the appropriate SHPO for review. State comments... are carefully considered by the Secretary before a certification decision is made. Recommendations of States with approved State programs are generally followed, but by law, all certification decisions are made by the Secretary...”* [36 CFR Part 67.1]. Similarly, the Florida State Historic Preservation Office reviewed both the Part 1—Evaluation of Significance and the Part 2—Description of Rehabilitation for the Crown, and forwarded them to TPS with recommendations. Regarding the Part 1, the SHPO recommended that the property “appears to meet the National Register Criteria for Evaluation” [Review & Recommendation Sheet Significance—Part 1 dated October 20, 2005]. Regarding the rehabilitation proposal described in the Part 2, the SHPO recommended that the rehabilitation of the Crown “does not meet Standard number(s) 2, 3, 4, 5, 6, 9” for reasons detailed in five-pages of review comments. [Review & Recommendation Sheet Rehabilitation—Part 2/Part 3 dated April 17, 2006]. The issues cited by the State Historic Preservation Office as not meeting the Standards for Rehabilitation include all of the items cited by TPS in its decision, and discussed at length above. Thus, the recommendations by the SHPO on both the Crown and the Cadillac Hotel rehabilitation projects are in agreement with the decisions reached by TPS and with my own finding. (However, even if the SHPO’s recommendation did not agree with those of TPS, I would still be compelled to uphold the previous decision in this case.) As program regulations state, *“... the decision of the Secretary may differ from the recommendation of the SHPO.”* [36 CFR Part 67.1].

I have read and noted the support that the Crown rehabilitation has received from local authorities. This support is found in an affidavit of _____ the Assistant Director of the City of Miami Beach Planning Department, as well as the Resolution by the Historic Preservation Board (Exhibits 8 and 9 of the material presented for my review). I respect these parties and the opinions they express, but must respectfully disagree. As Department of the Interior regulations note, *“Prior approval of a project by Federal, State, and local agencies and organizations does not ensure certification by the Secretary for Federal tax purposes. The Secretary’s Standards for Rehabilitation take precedence over other regulations and codes in determining whether the rehabilitation project is consistent with the historic character of the property and, where applicable, the district in which it is located.”*

Finally, I note that work on the Crown undertaken in this rehabilitation began in March of 2005, according to the Part 2 application. Both the Part 1 and the Part 2 application were signed on October 11, 2005, and submitted to the SHPO shortly thereafter for review and forwarding to TPS. By that time, the porte-cochere had already been demolished. According to the August 3, 2007, letter from _____ the demolition of this feature took place in April of 2005. Presumably much of the other work on the project was also well underway by that time. This is unfortunate. It is the experience of the National Park Service that buildings such as the Crown can usually be rehabilitated in a manner that preserves their historic character, even when new additions are considered essential for the continued viability of the property. It is precisely to avoid situations such as this that both the instructions accompanying the historic preservation certification application (page 2), and Department of the Interior regulations advise owners to apply before beginning work. However, while owners are free to apply after rehabilitation has begun, *“Owners who undertake rehabilitation projects without prior approval from the Secretary do so strictly at*

their own risk." [36 CFR Part 67.6(a)(1).] Nevertheless, I must review matters as I find them, and in this case I have no choice but to conclude as I have done.

As Department of the Interior regulations state, my decision is the final administrative decision regarding rehabilitation certification. A copy of this decision will be provided to the Internal Revenue Service. Questions concerning specific tax consequences of this decision or interpretations of the Internal Revenue Code should be addressed to the appropriate office of the Internal Revenue Service.

Sincerely,

A handwritten signature in black ink, appearing to read 'John A. Burns', with a stylized, flowing script.

John A. Burns, FAIA
Chief Appeals Officer
Cultural Resources

cc: SHPO-FL

IRS